

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2009

D052541 Tatum v. Ace Parking, Inc.

The judgment is affirmed. Ace is awarded costs on appeal. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

D053482 People v. Olachea

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D053097 People v. Smith

The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

D053265 People v. Yagyayeva

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., O'Rourke, J.

D054449 In re Scott on Habeas Corpus

The petition is denied.

D051612 Vicor Corporation v. Exar Corporation et al.

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

D051222 People v. McConnell

The judgment is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., Irion, J.

D053171 In re Michelle K. et al., Juveniles

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., McDonald, J.

D053504 People v. Oppido

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D054100 In re Gonzales on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2009 (Continued)

D052126 In re Wright on Habeas Corpus

Matter called on merits. John Patrick Dwyer, Esq. argued for appellant. Linnea Piazza, Deputy Attorney General argued for respondent. Mr. Dwyer replied. Matter submitted.

Court recessed at 9:21 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

D051465 Jeld-Wen, Inc. v. Action Iron Works Inc., et al.

D053094 Jeld-Wen, Inc. v. Cal-Coast Construction Specialities, Inc.

Cause called on merits. Jennifer Leigh Snodgrass, Esq. argued for appellant. Eliseu Val Meneses, Esq. argued for respondent, Western Insulation, Inc. Kimberly Amick, Esq. argued for respondent, South Coast Sheet Metal. Allison Lenore Jones, Esq. argued for respondent, KAS Supply Company, Inc. Mark L. Kincaid, Esq. argued for respondent, Cal-Coast Construction Specialities, Inc. Christopher M. Lea, Esq. argued for respondent, Pacific Coast Roofing Corp. J. Stacie Johnson, Esq. argued for respondent, Foshay Electric Co., Inc. John M. Fedor, Esq. argued for respondent, Action Iron Works, Inc., and etc. John M. Dwyer, Esq. argued for respondent, Action Iron Works, Inc. Ms. Snodgrass replied. Cause submitted.

Court recessed at 10:07 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D052381 Braga et al. v. Ogden

Cause called on merits. Barry M. Vrevich, Esq. argued for appellant, Ogden. Gino Dante Serpa, Esq. argued for appellant, Braga. Mr. Vrevich, replied. Mr. Serpa replied on cross-appeal. Cause submitted.

D052979 Marcus Foods v. PLA-ART INTERNATIONAL INC., et al.

Cause called on merits. Kevin Patrick Gerry, Esq. argued for appellant. Patrick Reader, Esq. argued for respondent. Mr. Gerry replied. Cause submitted.

Court recessed at 2:03 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 9, 2009 (Continued)

D051554) Larson v. Casual Male Stores, LLC.

D052185) Larson v. Casual Male Stores, LLC.

Cause called on merits. David C. Casey, Esq. argued for appellant, Casual Male. Timothy G. Williams, Esq. argued for appellant, Larson. Mr. Casey replied. Cause submitted.

D052533 Bains, III et al. v. Moores et al.

Cause called on merits. Patricia A. Meyer, Esq. argued for appellant. Harry A. Olivar, Esq. argued for respondent, Moores. Robin C. Gibbs, Esq. argued for respondent, Noell. Leighton M. Anderson, Esq. argued for respondent, Cole. Ms. Meyer replied. Cause submitted.

Court recessed at 4:00 p.m. until Tuesday, February 10, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2009

D053618 Grayton v. Salmeron-Garcia

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D054539 Diana M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The Court of Appeal is in receipt of petitioner's Notice of Intent to File Writ Petition filed in Superior Court on February 3, 2009. The Notice of Intent is not from a hearing where the matter was referred to a Welfare & Institutions Code section 366.26 hearing. (California Rules of Court, rule 8.452 and 5.600.) The Notice of Intent is DISMISSED.

D054067 In re M. R., a Juvenile

The appeals are dismissed. Aaron, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D054060 In re I.V., a Juvenile

The appeal is dismissed. O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.

D052432 People v. Young

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D054474 In re Consiglio on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Nares, McIntyre and Irion.

Petitioner filed the instant form petition challenging a condition of parole which restricts him from residing near schools and parks. The petition is denied because it has no documentary support. (*People v. Duvall* (1995) 9 Cal.4th 464, 474 ["the petition should include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations"].) Moreover, petitioner has made no showing that he pursued habeas relief before the trial court in the first instance. (See *In re Steele* (2004) 32 Cal.4th 682, 692; *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) The petition is denied.

D053745 In re Raymond V., a Juvenile

The appeal is dismissed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

D053765 In re Raymond V., a Juvenile

The appeal is dismissed. Nares, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2009 (Continued)

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald
Clerk: D. Moore

D052776 Piro v. Piro

D053529 Piro v. Piro

Cause called on merits. Cause called on merits. Wesley W. Peltzer, Esq. argued for respondent. Jeff Piro, argued for appellant, in pro per. Cause submitted as to D052776, only.

D051987 Hartwell v. Children's Hospital San Diego

Cause called on merits. Rod M. Toothacre, Esq. argued for appellant. Lisa W. Cooney, Esq. argued for respondent. Mr. Toothacre replied. Cause submitted.

Court recessed at 9:36 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D052383 Singleton v. Puglia et al.

Cause called on merits. No appearance by Stanley Ezell Singleton, appellant in pro per. Michael Anthony Hernandez, Esq. was present in oral argument for respondent, Puglia and submitted on the briefs. Chandra E. Kiamilev, Esq. was present in oral argument for respondent, Heinrichs and submitted on the briefs. Cause submitted.

Court recessed at 9:45 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D051917 Hance v. Smith

Cause called on merits. Gregory Smith, argued for appellant in pro per. Gregory Smith, argued for respondent, in pro per. Mr. Smith replied. Cause submitted.

Court recessed at 10:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2009 (Continued)

D053071 Rammel v. Burnham

Cause called on merits. Anna Romanskaya, Esq. argued for appellant. Margaret J. Cartwright, Esq. argued for respondent. Ms. Romanskaya replied. Cause submitted.

D052802 McAvoy et al. v. Hilbert

Cause called on merits. Bernard Conrad Jasper, Esq. argued for appellant. David J. Gallo, Esq. argued for respondent, Levine. Charles D. Nachand, Esq. argued for respondent, McAvoy. Mr. Jasper replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D052514 Boyd v. Boyd

Cause called on merits. Elizabeth Anne Kreitzer, Esq. argued for appellant. Anthony John Boucek, Esq. argued for respondent. Ms. Kreitzer replied. Cause submitted.

Court recessed at 2:43 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D052086 People v. Aispuro

Cause called on merits. Kurt David Hermansen, Esq. argued for appellant. Mike Murphy, Deputy Attorney General argued for respondent. Mr. Hermansen replied. Cause to be submitted at a later date.

Court recessed at 3:11 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D049704 In re Rozzo on Habeas Corpus

Matter called on merits. Roger Sandberg Hanson, Esq. argued for appellant. Linnea Piazza, Deputy Attorney General argued for respondent. Mr. Hanson replied. Matter submitted.

Court recessed at 3:40 p.m. until Wednesday, February 11, 2009 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2009 (Continued)

D054123 In re Diaz on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Nares, McIntyre and Irion.

Petitioner has filed an incomplete petition consisting only of pages one and six of a form petition, along with an "introduction." Petitioner seeks "reconsideration" of the superior court's August 29, 2008, denial of his habeas petition.

Because California is an "original writ" system, no reconsideration or appeal lies from the denial of a petition for writ of habeas corpus. (*In re Clark* (1993) 5 Cal.4th 750, 767 fn. 7; *Carey v. Saffold* (2002) 536 U.S. 214, 221-222.) Rather, a prisoner whose petition has been denied by the superior court can obtain review of his claims only by filing a new and complete habeas petition in the Court of Appeal. (*In re Clark, supra*, at p. 767 fn. 7; *People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petition is denied.

D053659 In re Walker on Habeas Corpus

The petition is denied. The request for appointment of counsel is denied.

D054051 Kutina v. Jauregui

The appeal filed November 6, 2008, is dismissed because appellant did not timely deposit costs for preparing the record on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 11, 2009

D054182 Kenny et al. v. The Superior Court of San Diego County/The Automotive Group et al.

The petition is denied.

D054033 In re Joe G., a Juvenile

The appeal is dismissed. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D050674 People v. Piumelli et al.

The judgment as to Amy is affirmed. The judgment as to Jonathan is reversed insofar as the probation order imposes alcohol testing conditions on Jonathan; in all other respects, the judgment is affirmed. On remand, the trial court is directed to strike the conditions of probation requiring Jonathan to submit to alcohol testing. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D053757 In re Luisa R., a Juvenile

The order is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

D051927 In re the Marriage of Murphy

The judgment is affirmed. Appellant John to pay all ordinary costs on appeal. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

D052531 People v. Puckett

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D053501 In re Robert M., a Juvenile

The judgment is reversed. The remittitur is to issue forthwith. McConnell, P.J.; We Concur: Haller, J., Irion, J.

D052213 People v. Pitt

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

D053240 People v. Parker

The judgment is affirmed. Nares, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D051882 People v. Williams et al.

Judgments affirmed. Benke, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D054419 In re Johnson on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 11, 2009 (Continued)

D052031 110 Associates, LLC v. Grover

Respondent's motion to dismiss the appeal and appellant's late opposition to the motion have been read and considered by Presiding Justice McConnell and Associate Justices McIntyre and Irion. The appeal is dismissed. Respondent's request for attorney fees and costs on the motion is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D052065 People v. Cervantes

Cause called on merits. Charles R. Khoury, Esq. argued for appellant. Karl Terp, Deputy Attorney General argued for respondent. Mr. Khoury replied. Cause submitted.

D052342 Gustafson et al. v. Mazzarella et al.

Cause called on merits. Douglas A. Pettit, Esq. argued for appellant. Dan L. Stanford, Esq. argued for respondent. Mr. Pettit replied. Cause submitted.

Court recessed at 9:26 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

D051939 Ivanov v. Stoeva

Cause called on merits. David A. Kay, Esq. argued for appellant. Glen F. Dorgan, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 9:51 a.m. to change panels. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

D051552 J v. F

Cause called on merits. Charles A. Bird, Esq. argued for appellant. Stephen M. Hogan, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 10:28 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 11, 2009 (Continued)

D052103 Apex Wholesale, Inc. v. Fry's Electronics, Inc.

Cause called on merits. Scott A. McMillan, Esq. argued for appellant. William H. Curtis, Esq. argued for respondent. Mr. McMillan replied. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

Clerk: D. Moore

D051304 People v. Lenora

Cause called on merits. Gerald P. Peters, Esq. argued for appellant. Eric Swenson, Deputy Attorney General argued for respondent. Mr. Peters replied. Cause submitted.

D052965 Curren v. San Diego Painting

Cause called on merits. Gary A. Curren, argued for appellant, in pro per. Jeffrey Lynn Mason, Esq. argued for respondent. Mr. Curren replied. Cause submitted.

Court recessed at 2:10 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D052288 Straczynski et al. v. Straczynski

Cause called on merits. Stephen Hernandez Arnold, Esq. argued for appellant. Lewis Merrill Wolensky, Esq. argued for respondent. Mr. Arnold replied. Cause submitted.

Court recessed at 2:20 p.m. until Friday, February 13, 2009 at 9:00 a.m.

D050719 Cristler et al. v. Express Messenger Systems, Inc.

The opinion filed January 23, 2009, is ordered certified for publication.

D051422 People v. English

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D054543 Sandoval v. Superior Court of Imperial County/People

The petition for writ of mandate and request for stay have been read and considered by Justices Nares, McIntyre and Irion. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2009 (Continued)

D052462 Mustafa v. Anderson Appraisal Services

The request for publication of the opinion is denied.

D052080 People v. Bankers Insurance Company

The order is reversed and the cause is remanded to the trial court with directions to vacate the forfeiture and exonerate the bond. Haller, J.; I Concur: Benke, Acting P.J., I dissent: McIntyre, J.

D054103 In re Jeremiah D., a Juvenile

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rules 8.412(d)(1)(A), and 8.416(g). The appeal is dismissed.

D052979 Marcus Food, Co. v. PLA-ART International Inc., et al.

The judgment is affirmed. Cold Storage is entitled to costs on appeal. McConnell, P.J.;
We Concur: Aaron, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2009

D053694 People v. Swadener

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Aaron, J.

D052448 People v. Jenkins

The judgment is affirmed. McConnell, P.J.; McDonald, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell Presiding Justice and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D052519 People v. Bunch

Cause called on merits. John Lanahan, Esq. argued for appellant. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Mr. Lanahan replied. Cause submitted.

D052279 People v. Thompson

Cause called on merits. Tracy Rogers, Esq. argued for appellant. Chandra Appell, Deputy Attorney General argued for respondent. Ms. Rogers replied. Cause submitted.

D053475 In re Zepeda on Habeas Corpus

Matter called on merits. Charles Chung, Deputy Attorney General argued for appellant. Rex Williams, Esq. argued for respondent. Mr. Chung replied. Matter submitted.

Court recessed at 9:50 a.m. until 1:30 p.m.

D052805 People v. Hayden

The judgment is reversed and remanded for a reconsideration of whether Hayden would not be likely to use a firearm in a safe and lawful manner based on proper and current reports. Huffman, Acting P.J., We Concur: McDonald, J., O'Rourke, J.

D052382 County of San Diego v. 1560 N. Magnolia Ave., LLC

The judgment is affirmed. The County is entitled to costs on appeal. McConnell, P.J.; We Concur: Haller, J., Aaron, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2009 (Continued)

D052734 Lutz v. First American Escrow Transfers, Inc.

Cause called on merits. Charles Moore, Esq. argued for appellant. Robert Harvey, Esq. argued for respondent. Mr. Moore replied. Cause submitted.

D052390 Pacific Torrey Reserve Holdings, LP v. City of San Diego

Cause called on merits. Neal Panish, Esq. argued for appellant. Carmen Brock, Deputy City Attorney argued for respondent. Mr. Panish replied. Cause submitted.

Court recessed at 2:23 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion.

D052028 Baldwin v. Baldwin

Cause called on merits. Dale Earven, Esq. argued for appellant. Jeffrey Baldwin appeared in pro persona. Mr. Earven replied. Mr. Baldwin replied. Cause submitted.

Court adjourned at 2:50 p.m.

D054578 Herbelin v. Superior Court of San Diego County/Garay

The petition is denied.